IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.32860 of 2006
PROF.RAM NARAYAN KHARGA
Versus
STATE OF BIHAR & ORS

For the petitioner : Mr. Anil Kumar Mukund, Advocate
For the state : Mr. Jharkhandi Upadhaya, A.P.P.
For O.P.No.2 : Mr. Jasbir Singh Arora , Advocate
For O.P.Nos.3 to 5 : None.

O R D E R

The Second Party to a proceeding under Section 144 Cr.P.C., being case no. MR No.1916 of 2006 is aggrieved by the order dated 21.02.2006 passed therein by learned Sub Divisional Magistrate, Sadar, Darbhanga, whereby he has converted the said proceeding into one under Section 145 Cr.P.C. and the subsequent order dated 26.5.2006 passed by the learned Sessions Judge, Darbhanga in Criminal Revision No.116 of 2006 dismissing the revision preferred against the order dated 21.02.2006 and has prayed for the quashing of both the orders.

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The bone of contention appears to be a plot of land in ***Khesra*** no.29377 of **Mohalla** Bakerganj , P.S. Laheriasarai bounded on the north by the house of the first party , on the south by a ***gali*** followed by the lands and house of the 2nd party , on the west of road and on the east by the house of Munni Devi followed by publict drain.

It appears that Opp. Party 2nd party filed a petition before the Officer Incharge, Laheriasarai Police Station on 7.12.2005 alleging inter alia that her house is adjacent north of the petitioner herein and that Opp.Party nos.3 and 4 along with others came and

began to damage /destroy the house of the petitioner as a result whereof the common wall of the petitioner and Opp.Party 2nd party was damaged. The local police noticed both parties to produce relevant documents in their support in respect of ***Khesra*** no.29377 and eventually submitted a report vide non-F.I.R. no.17/05 and satisfied therefrom the learned Sub Divisional Magistrate drew up the said proceeding under Section 144 Cr.P.C. and noticed the parties to submit their respective show cause. Subsequently, the proceeding was converted ,as stated above, after appearance of both parties.

Assailing the impugned order it was submitted on behalf of the petitioner that the very initiation of the proceeding was not maintainable since the material facts of the case had not been stated in the order nor had the area or dimension of any side of the land been revealed. It was also submitted that the order passed was contrary to the weight of evidence on record and actual facts. The contention is that the learned courts below failed to take into consideration the fact that the proceeding was not maintainable since both parties admitted the Khesra in the proceeding as ***Makan-Main Sahan*** and as such the conversion was ***ab initio*** void .The conversion was also said to be not maintainable as Title Suit No.162 of 2005 was already pending adjudication in the court of Subordinate Judge-I, Darbhanga.

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On the other hand it was submitted by the learned counsel for Opp.Party no.2 herein that since the learned Magistrate was satisfied that there was likelihood of breach of peace arising from dispute between the parties he was fully within his rights to convert

the proceeding. He also sought to negate the objection of the petitioner to the maintainability of the proceeding due to the pendency of the Title Suit since that was a suit for specific performance of contract.

The learned counsel for Opp.Party no.2 is perfectly justified in his submission that the pendency of a suit for specific performance of contract cannot be a bar to the maintainability of a proceeding under Section 145 Cr.P.C. since such a suit does not decide title and possession and I am in full agreement with this submission.

So far as the merit of conversion of the proceeding is concerned, it is by now well settled that the satisfaction of the Magistrate about the bona fide dispute and apprehension of breach of peace is final and if on being satisfied on these two counts the Magistrate closes up a proceeding under Section 144 or converts its into one under Section 145 Cr.P.C. the High Court will interfere after all a finding regarding bona fide dispute over a property and apprehension of breach of peace arising out of such dispute are the ***sine qua non*** for converting a proceeding under Section 145 Cr.P.C.

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The Supreme Court in the case of R.H.Bhutani –Vrs. Miss Mani J. Desai (AIR 1968 SC 1444) has even gone to the extent of observing that only because in his order of conversion the learned Magistrate failed to mention about these two facts will not render the order illegal. In the instant case the learned Magistrate on perusal of the records including the show cause filed by the parties and hearing the counsels for the parties was fully satisfied that in view of both parties claiming possession over the lands in question and there being

a genuine dispute over the property which might lead apprehension of the breach of the peace had converted the said proceeding under Section 144 Cr.P.C. to under Section 145 Cr.P.C.

Under the circumstances, in my view the order of the learned Magistrate as also the revisional court cannot be interfered with. Accordingly, this application is dismissed there being no merit.

(Abhijit Sinha, J)

Patna High Court,Patna
Dated : the 14th August,2008
Nawal Kishore Singh/A.F.R.

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